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UNCLAS SECTION 01 OF 02 BRUSSELS 002181

SIPDIS

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E.O. 12958: N/A

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SUBJECT: EU FM TALKS RAISE DOUBTS ABOUT JUNE TARGET
FOR CONSTITUTIONAL TREATY

REF: DUBLIN 737

SUMMARY

1. (SBU) EU Foreign Ministers in the May 17-18 session of the Intergovernmental Conference (IGC) - the first since the collapse of the December 2003 Summit - made little progress on the draft EU Constitutional Treaty. Irish FM/IGC chair Cowen nevertheless remained confident the Treaty will be agreed at the June 17-18 European Council. But several FMs, including UK Foreign Secretary Straw, Belgian FM Michel and Polish FM Cimoszewicz, gave gloomier predictions. Cimoszewicz complained that nobody was prepared to listen to his proposals for resolving the key dispute over voting rights in the Council ("If it goes on like that, I would not bet on an agreement"). IGC negotiations will continue on May 24. END SUMMARY

2. (SBU) Cowen cited progress on "a number of issues," but only pointed to a few. One was apparent agreement on a proposal for teams of three countries to share duties over 18 months as chairs of ministerial level Councils (other than the External Relations and ECOFIN Councils, which would have longer term chairs). COMMENT: Although one of the Constitutional Treaty's purported aims is to make the EU easier to understand, this formula strikes us as no simplification of EU structures. END COMMENT.

SCOPE OF QUALIFIED MAJORITY VOTE: DIFFERENCES REMAIN

3. (SBU) As anticipated by the Irish (reftel), agreeing on the scope of how far to extend qualified majority voting (QMV) in the Council continues to pose real problems. Sources involved in the discussions told us the only additional clarity after this week's IGC meetings was that QMV would not be extended to foreign and security policy (CFSP), where countries such as the UK, Denmark, Latvia, Slovakia and Malta all spoke out in favor of retaining a requirement on consensus. For other areas under debate, the Presidency refrained from making new proposals at this stage. The UK restated its "red lines," in particular for retaining the consensus requirement on taxation and social security, but also continued concern about judicial cooperation in criminal matters. Luxembourg and several new members (Poland, Estonia, Slovakia, and Malta) backed the UK's call for a continued veto right on the tax and social security issues.

4. (SBU) While no agreements were reached, FMs did reportedly discuss in some detail a possible "emergency brake" procedure that could apply to some areas. This would allow a member of the Council who considers that a draft European framework law would infringe the fundamental principles of its legal system to request that the piece be referred to the European Council. The leaders could decide to request a new proposal from the Commission or go ahead with the legislative process under QMV. Supporters of extending QMV to as many areas as possible (reported to include governments such as Belgium, Greece, and Spain) argue this might be a way of introducing QMV in more areas while still giving due deference to national interests.

COMMISSION SIZE DEBATED

5. (U) Another lengthy topic of debate was the size of future Commissions. The Irish tabled "ideas" for retaining the one Commissioner per country principle until a given date (such as 2014), after which a new system would take effect, based on equal rotation. Belgium, France and Germany were most vocal in calling for a reduced Commission to allow for its effective functioning. The most likely option would

be a Commission of two-thirds the number of EU members, but other possibilities exist. At the other end of the spectrum, many new Member States as well as Denmark, Austria and Greece, stuck to the one Commissioner per country formula. The UK argued the newly-created EU FM position (who would also sit on the Commission) should not be counted against a Member States rotation.

FRANCE CALLS FOR MORE AGGRESSIVE APPROACH

16. (U) French FM Barnier publicly called on the Presidency to produce a global compromise package: "We need a moment of truth. It's time for the Presidency to take a risk." The call was perceived as aimed at countering efforts by the UK to broaden the unanimity rule in order to secure public support in a prospective referendum. Speaking at his final press conference, Cowen politely rebuffed Barnier: "It's not a question of taking risks. It's a question of having sufficient discussion that will allow the Presidency to put forward proposals that will meet with agreement." Cowen said the Irish would offer a global package when the time was right. He also announced an extra IGC ministerial on May 24.

COMMENT

17. (SBU) This week's negotiations did not make the hoped-for progress, casting doubts about the leaders' chances to meet their self-imposed target. This is not necessarily fatal for the draft Constitutional Treaty: the IGC's unofficial motto ("Nothing has been agreed until everything has been agreed") indicates how difficult it can be to assess what flexibility exists in various Member State positions. The final litmus test of the Irish negotiating tactics will come at the June 17-18 Summit. But with the Euro-elections just a few days earlier, the stated intention of many countries to consider any concession on the institutions only as a part of a final overall package, the added pessimism that even a deal agreed in the IGC might not survive the ratification process in all 25 Member States, and the continued uncertainty over the domestic political situation in Poland are all factors that complicate the betting and the search for a Constitution deal.

SCHNABEL